

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

GIA M. HUGHES-SMITH,)	
)	
)	
Plaintiff,)	
)	
v.)	1:13cv1048 (JCC/TRJ)
)	
)	
CROWN LINEN SERVICE, INC.,)	
)	
and)	
)	
TIMOTHY ALAN SETZER)	
)	
Defendants.)	

M E M O R A N D U M O P I N I O N

This matter is before the Court on Plaintiff's Second Motion for Extension of Time to File Response / Reply. [Dkt. 21.] For the following reasons, the Court will deny Plaintiff's Motion.

I. Background

On January 29, 2014, Defendants filed a Motion for Summary Judgment seeking dismissal of Plaintiff's Complaint in its entirety. [Dkt. 17.] The deadline for Plaintiff to file her opposition was February 12, 2014. On that date, Plaintiff filed a Motion for Extension of Time to File Response / Reply, requesting until Thursday, February 13, 2014 to file her opposition to Defendant's Motion for Summary Judgment. [Dkt.

20.] In this motion, Plaintiff represented that "counsel for Defendants does not oppose Plaintiff's Motion." (First Mot. for Extension of Time at 1.)

On February 14, 2014, Plaintiff filed a Second Motion for Extension of Time to File a Response / Reply seeking a "one day extension of time" or until "Thursday, February 18, 2014." [Dkt. 21.] As grounds for this motion, Plaintiff "represents that inclement weather has rendered a meeting between Plaintiff and her counsel difficult or impossible and that additional time may facilitate resolution of this matter." (Second Mot. for Extension of Time at 1.) On February 17, 2014, Defendants filed their opposition to Plaintiff's Second Motion for Extension of Time. [Dkt. 22.]

Plaintiff's Second Motion for Extension of Time is now before the Court.

II. Analysis

Defendant argues that the Court should deny Plaintiff's Second Motion for Extension of Time because there is no basis for granting this extension. Defendant asserts that contrary to Plaintiff's statements that "additional time may facilitate resolution of this matter," no settlement communications have occurred in this case. (Opp'n at 2; Aff. of Scott Kamins ¶ 4 [Dkt. 22-1].) Instead, Defendant offers an e-mail sent by Plaintiff's counsel giving the following as the

basis for the extension: "a rather big trial this week has set me back." (Def. Ex. 1 [Dkt. 22-1].)

Pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, a "court may, for good cause, extend the time" by which "an act may or must be done." Fed. R. Civ. P. 6(b). The Rule also provides that after the time has expired, as it has in this case for Plaintiff's Second Motion for Extension of Time, "such extensions of time can only be granted by the court 'on motion . . . if the party failed to act because of excusable neglect.'" *Key v. Robertson*, 626 F. Supp. 2d 566, 575 (E.D. Va. 2009) (quoting Fed. R. Civ. P. 6(b)(1)(B)).

Additionally, Local Civil Rule 7(H) provides that "after the filing of the complaint, all pleadings, motions, briefs, and filing of any kind must be timely filed with the Clerk's Office of the division in which the case is pending." E.D. Va. Local Civ. R. 7(H). Local Civil Rule 7(F)(1) provides that a party opposing a motion shall file a responsive brief within eleven days after service. E.D. Va. Local Civ. R. 7(F)(1). Pursuant to Federal Rule of Civil Procedure 6(d), three days are added to this period. Local Civil Rule 7(I) provides that "any requests for an extension of time related to motions must be in writing, and, in general, will be looked upon with disfavor." E.D. Va. Local Civ. R. 7(I).

In *Key*, this Court considered a plaintiff's motion to enlarge his time to respond to defendants' motions for summary judgment. The *Key* plaintiff's sole basis for his request for an extension was that counsel had been "extremely busy as of late." *Key*, 626 F. Supp. 2d at 577 (citations omitted). The Court noted that "ignorance of when a time period expires does not qualify as excusable neglect, nor does a busy schedule, lack of diligence, inadvertence, or other manifestations of carelessness and laxity." *Id.* (quoting *Eagle Fire, Inc. v. Eagle Integrated Controls, Inc.*, Civ. Action No. 3:06cv264, 2006 WL 1720681, at *4 (E.D. Va. June 20, 2006)).

Here, as in *Key*, the Court finds that Plaintiff's second request for an extension of time based upon his trial calendar is not "excusable neglect" within the meaning of Rule 6(b)(1)(B). Plaintiff's opposition to Defendant's Motion for Summary Judgment was due on February 12, 2014. Plaintiff's first motion for extension of time, filed on February 12, 2014, was not opposed by Defendant. (First Mot. for Extension of Time at 1.) Plaintiff, however, failed to meet the deadline proposed in the first motion for extension of time - February 13, 2014 - and instead filed a second motion for extension of time on February 14, 2014. This second motion for an extension of time was filed "after the time has expired" within the meaning of Rule 6(b)(1)(B) because even had the Court granted Plaintiff's

first motion, the timely filing date was to be extended only until February 13, 2014.

The Court will deny as moot Plaintiff's first motion for an extension of time, and will deny Plaintiff's second motion for an extension of time. Based upon the e-mail communications between counsel presented to the Court and Defense counsel's affidavit, which states that no settlement discussions have occurred, Plaintiff has not presented any reasons for this extension that are properly considered excusable neglect.

III. Conclusion

For the reasons stated above, this Court will deny as moot Plaintiff's First Motion for Extension of Time for File Response / Reply, [Dkt. 20], and deny Plaintiff's Second Motion for Extension of Time to File Response / Reply, [Dkt. 21.].

An appropriate order will issue.

February 20, 2014
Alexandria, Virginia

/s/
James C. Cacheris
UNITED STATES DISTRICT COURT JUDGE